

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**DePuy Mitek, Inc.)
a Massachusetts Corporation)
Plaintiff,)
v.) Civil No. 04-12457 PBS
Arthrex, Inc.)
a Delaware Corporation and)
Pearsalls Ltd.)
a Private Limited Company)
of the United Kingdom)
Defendants.**

**Mitek's Emergency Motion to Prevent Defendants From Presenting Witnesses at
Trial Who Were Not Disclosed As Trial Witnesses During Fact or Expert Discovery**

Plaintiff, DePuy Mitek, Inc., ("Mitek") submits this emergency motion to preclude Defendants, Arthrex, Inc. and Pearsalls Ltd. (collectively "Arthrex") from presenting the testimony of Dr. Burkhart and Mr. Benavitz at the August 6, 2007 trial. Arthrex first identified Dr. Burkhart and Mr. Benavitz as trial witnesses in its trial witness list. Mitek should not be prejudiced by Arthrex's last-minute creation of new evidence that Mitek's experts did not consider. Nor should Mitek be prejudiced by having to depose witnesses during its trial preparation period.

Mitek requests that Arthrex be precluded from presenting the testimony of Dr. Burkhart and Mr. Benavitz at trial. Arthrex's untimely disclosure is not justified and prejudices Mitek with a change in the factual record on the eve of trial.

Dated: July 6, 2007

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